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CHARLES ELMORE CROPLE

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IN THE

Supreme Court of the United States

OCTOBER TERM 1945

No. 814

MANHATTAN RAILWAY COMPANY and CHARLES FRANKLIN,
Petitioners,

v.

THE CITY OF NEW YORK, THEODORE S. WATSON, and others as a Committee for 7% Guaranteed Stock of Manhattan Railway Company; HAROLD PALMER, and others, as a Committee for 7% Guaranteed Stock of Manhattan Railway Company, and CHARLES FRANKLIN, and others, as Committee for Modified Stock of Manhattan Railway Company, and CHEMICAL BANK & TRUST COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOHN B. DOYLE,
Attorney for Manhattan Railway Company and Charles Franklin, Petitioners.

FREDERIC A. JOHNSON,
of Counsel.

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In the

Supreme Court of the United States

October Term 1945

No.

Manhattan Railway Company and Charles Franklin,

Petitioners,

v.

The City of New York, Theodore S. Watson, and others as a Committee for 7% Guaranteed Stock of Manhattan Railway Company; Harold Palmer, and others, as a Committee for 7% Guaranteed Stock of Manhattan Railway Company, and Charles Franklin, and others, as Committee for Modified Stock of Manhattan Railway Company, and Chemical Bank & Trust Company,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice of the United States and the Associated Justices of the Supreme Court of the United States:

Your petitioners respectfully submit their petition for a writ of certiorari to review the decision of the Circuit Court of Appeals for the Second Circuit in the above cause.

Jurisdiction

The decree of the Circuit sought to be reviewed was entered on December 31, 1945. The jurisdiction of this

Court is invoked under Section 240-a of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938).

The opinion of the Circuit Court of Appeals for the Second Circuit was filed December 31, 1945.

Opinions Below

The opinion of the Circuit Court of Appeals has not been reported and is printed as an appendix to the certified Record. The opinion of the District Court is in this Record (R. 284-291).

Entry of orders for distribution of funds, on mandate, is withheld pending this application.

Questions Presented

The fundamental question presented by this petition is whether a federal district court in an equity receivership has the power to entertain the application of an attorney, who has theretofore been duly retained therein by the board of directors of a corporation, to enforce an equitable lien against the fund which he recovered pursuant to his retainer for the benefit of all stockholders of that corporation.

A related question is whether petitioners may enforce through the same petition in equity a lien of attorney or solicitor alleged to have arisen by virtue of Sections 474 and 475 of the Judiciary Law of the State of New York.

As particularly applied to the equitable jurisdiction of the federal district courts, the question is whether power therein exists to allow petitioner Franklin an award "as between solicitor and client" for services rendered by him in recovering a fund for the stockholders.

As particularly applied to Sections 474 and 475 of the Judiciary Law of the State of New York, the question is whether the statutory lien thereby provided for is available to petitioner Franklin in this proceeding to enforce

an award out of the fund obtained through his professional services rendered for the ultimate benefit of the stockholders.

Summary Statement of the Matter Involved

The essential facts are contained in the subsequently cited folios of the certified Record, the affidavits of petitioner Franklin therein, the opinions of the courts below in the instant proceeding and in passages, hereinafter referred to specifically, from the numerous opinions set forth in the Record (R. 26, 27, 288), or from opinions which are closely related to this litigation.

This Court is asked to review the determination of the Circuit Court of Appeals which denies to petitioner, Charles Franklin, the right to enforce an attorney's lien either under the aforesaid equitable principles or in accordance with the above mentioned provisions of the state statutes. The relevant portions of the New York Judiciary Law are:

> "Sec. 474. Compensation of attorney or counsellor.
>
> The compensation of an attorney or counsellor for his services is governed by agreement, express or implied, which is not restrained by law, * * *".

> "Sec. 475. Attorney's lien in action, special or other proceeding.
>
> From the commencement of an action, special or other proceeding in any court or before any state or federal department, except a department of labor, or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, judgment or final order in his client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after

judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien. As amended L. 1936, c. 876; L. 1938, c. 34, eff. Sept. 1, 1938."

Petitioner Franklin's claim to recover compensation for his professional services as a *contract* obligation owed to him by The City of New York, one of the respondents herein, was not upheld (*Franklin et al.* v. *City of New York, et al.*, 144 F. 2d 571, C. C. A. 2d; certiorari denied, 324 U. S. 847).

It was upon a cross motion made by said respondent in opposition to the instant application of petitioners to impress a lien upon the fund in question that the order of dismissal was entered by the District Court in this proceeding (R. 285-291).

Petitioner Franklin, however, relies for his right to enforce his equitable and statutory liens upon his retainer by the board of directors of the petitioned Manhattan Railway Company. He also relies upon the agreement, dated August 7, 1939, which he entered into with the Manhattan's Modified Stock Committee; particularly, for his right to enforce the statutory lien. He was elected by the board of directors of Manhattan on November 11, 1932, to serve as the general counsel for the Company (R. 14). On January 30, 1933, by court order, he became its solicitor (R. 15, 146). By a subsequent vote of the board of directors on February 8, 1934, his compensation as general counsel was fixed at $15,000 per year, retroactive to November 11, 1932, the date of his appointment as such counsel (R. 14-15, 97-99). Through this subsequent vote and the resolution thereby adopted by the board of directors on February 8, 1934, with reference to petitioner Franklin's annual compensation of $15,000, it was declared in an added proviso that this "is not intended to cover the special services rendered by him, such as representing the Manhattan Railway Company in the

courts, and in conferences respecting unification, for which reasonable compensation will be paid" (98).

On June 17, 1938, the Company through its board of directors entered into an agreement with petitioner Franklin (R. 100-105) whereby he was to receive a minimum of $250,000 payable to him as "counsel out of any funds or property which it may receive for itself or for or on account of its stockholders, including any property or funds which it may receive from or in respect to claims or rights against the Interborough Rapid Transit Company or its Receiver or the City of New York" (R. 102, 103).

On August 7, 1939, the Manhattan's Modified Stock Committee made an agreement with petitioner Franklin, as stated previously, to assume the legal expenses out of any cash, stock or other property received under the proposed Plan of Unification with the City of New York, including the obligation in the foregoing agreement of June 17, 1938 (R. 154, 155). This was the protective committee for the Modified 5% Stock of the Manhattan Railway Company (R. 50, 154). These shares formed one of the two classes which made up the stock of the Company (R. 50, 205). The other consisted of the Unmodified 7% Stock, whose protective committees raised no objection to a further allowance to petitioner Franklin; the Chairman and Vice Chairman of one thereof testifying as individuals prior to the instant proceeding that they thought the allowance sought by him should be granted (R. 50, 51). The respective solicitors for these committees have also approved this claim (R. 273).

It was owing to the efforts of petitioner Franklin between 1932 and the consummation of the Plan of Unification in 1940 that the interests of the stockholders of the Manhattan Railway Company were not eliminated. The danger of this elimination was twofold. On the one hand, the Interborough Rapid Transit Company attempted to

destroy the value of the stock by proceeding to disaffirm the lease which it held on the lines of the Manhattan Railway Company. On the other hand, the Protective Committee for the First Consolidated Mortgage Bonds of Manhattan desired to wipe out the stock of this Company through foreclosure. It is the expressed opinion of competent authority that petitioner Franklin saved the interests of the stockholders from both of these attacks (R. 175-181).

The Interborough Rapid Transit Company was placed under an equity receivership on August 26, 1932, as a result of a friendly suit instituted by the American Brake Company (See *Johnson* v. *Manhattan Ry. Co.*, 61 F. 2d 934, at 939, C. C. A. 2d). This receivership was promptly extended to Manhattan (*ibid.*). After protracted litigation and a settlement, in both of which petitioner Franklin participated actively throughout, the effort of Interborough to disaffirm the lease from Manhattan was defeated (*Murray* v. *Roberts,* 103 F. 2d, 889, C. C. A. 2d; certiorari dismissed by virtue of Rule 35 [311 U. S. 720]). The Interborough in 1913 had leased the elevated lines constituting the entire assets of the Manhattan Company, to integrate them in a vast extension of its subway system (*City of New York* v. *Interborough R. T. Co.*, 257 N. Y. 20; *Murray* v. *Roberts,* 103 F. 2d, *supra,* 895, 896, C. C. A. 2d).

In the years following the First World War, this lease turned from a source of profit into one of loss (*Gilchrist* v. *Interborough Co.*, 279 U. S. 159, 200). Interborough then desired to rid itself of the lease. Obviously, the attempt, if successful, would have destroyed whatever diminished value the stock of Manhattan retained at that time (R. 175, 176). The preservation of the stock interest through the professional labors of petitioner Franklin yielded ultimately $18.00 per share, to the holders of 556,490 shares of the Modified 5% Stock and approximately $31.50 per share, to the holders of 43,150 shares of the Unmodified 7% Stock (R. 176), a realization of

$11,376,045. It is thus apparent why the responsible stockholders' committeemen and solicitors have favored petitioner's claim for compensation.

A less vigilant or skillful attorney might also have permitted the sacrifice or the subordination in the interim of the interests of the stockholders to the claims of the bondholders of Manhattan in accordance with the general rule for such priority. Litigation on this question, raising most complex issues, reached the Circuit Court of Appeals for the Second Circuit, and led to a decision that the stockholders of Manhattan had a direct interest in the properties of the Interborough under the lease between the two companies (*American Brake Shoe & F. Co.* v. *Interborough R. T. Co.*, 122 F. 2d 454, 459-461, C. C. A. 2d).

There are at present two existing reserve funds established by the stockholders of the Manhattan Railway Company to pay legal compensation on behalf of said Company. A balance of these reserves approximating $500,000 is on deposit with the Chemical Bank & Trust Company (R. 11). Upon this petition, no review is sought of any rulings unless they pertain to the denial of a right in petitioners to impress a lien upon funds allocated to the Manhattan stockholders.

Petitioner Franklin claims $90,000 for services as general counsel. This amount is arrived at upon the basis of said petitioner's services for 7½ years at $15,000, less $22,500, previously received under an order of the late Judge Mack, who for a period of years prior to his final illness had the receivership proceedings before him (R. 16, 17; See *American Brake Shoe & F. Co.* v. *Interborough R. T.*, 10 F. Supp. 512). In addition, petitioner claims $225,000 for services as Manhattan's solicitor in the receivership and related proceedings (R. 17).

In the prior proceeding wherein petitioner Franklin attempted unsuccessfully to establish a contractual obliga-

tion against the City of New York (*Franklin et al.* v. *City of New York et al.*, 144 F. 2d 571, C. C. A. 2; certiorari denied, 324 U. S. 847), Judge Patterson made an allowance of $20,000 instead of the $345,000 claimed (R. 18, 19). Although the Circuit Court of Appeals modified this order by adding $15,000 for general counsel services, it adopted the theory that "allowances must be made in accordance with the principle which controls the allowance of counsel fees in receivership cases, namely, benefit to the receivership estate" (R. 18, 19).

In the instant proceeding, as its opinion shows, the Circuit Court has maintained the view that petitioners are adhering to a theory of the existence of a contract obligation on the part of the City. The gist of the opinion follows:

> "Legal fees in the receivership are governed not by any general equitable principles, but by the Plan itself; and our earlier interpretation of its terms is final. The claims themselves being barred, the assertion of a lien as security for their collection must obviously fail" (R. p. 104).

But the Court's earlier interpretation dealt only with an alleged contractual obligation of the City under the Plan. The present petition (R. 11-59) is to charge the stockholders who were benefited upon equitable principles and under state statute, and regardless of the Plan; a claim neither raised nor decided in the earlier proceeding.

Reasons Relied on for Allowance of the Writ

1. The denial of the applicability of general equitable principles to sustain recovery by an attorney of compensation out of a fund obtained by his professional services for the benefit of stockholders of a corporation, whose board of directors duly retained him to accomplish this result, is in conflict with the opinion of this Court in *Sprague* v. *Ticonic National Bank*, 307 U. S. 161.

The Circuit Court of Appeals was under a misapprehension as to the nature of this application, since the opinion asserts that "petitioners seek in substance to obtain further allowances from the City of New York for the legal services of petitioner Franklin". On the contrary, as the summary statement hereinabove shows, the allowances are sought out of a segregated fund recovered on behalf of stockholders.

2. The denial to petitioner Charles Franklin of the right to enforce a lien provided for by applicable state statute is contrary to the principle accepted by this Court in *Central Railroad* v. *Pettus,* 113 U. S. 116.

It is further an anamoly, as the interpretation placed upon this statute in a bankruptcy proceeding by the Federal Court for the Southern District of New York, provides for the lien on the claim and the fund allocated to the payment thereof, and not on the general assets of the estate (*In re McCrory Stores Corporation,* 19 F. Supp. 681).

WHEREFORE, your petitioners, respectfully pray that a writ of certiorari issue under the seal of this Court to review the decree of the Circuit Court of Appeals for the Second Circuit in the above cause, and that said decree be reversed.

New York, February 4, 1946.

Respectfully submitted,

JOHN B. DOYLE,
Attorney for Petitioners, Mantantan Railway Company and Charles Franklin.

FREDERIC A. JOHNSON,
of Counsel.